FARAD CONTINUATION SHEET.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No.2895 of 2007

Devidas Ramchandra Jadhav ..Applicant.

Vs.

State of Maharashtra .. ..Respondent.

Mr D. V. Sutar, Advocate for the applicant.

Ms M.H. Mhatre, APP for the State-Respondent.

CORAM: V.C. DAGA,J.

DATED: 14.9.2007.

1. Heard learned counsel for the applicant-accused and learned APP for the State.

2. Perused bail application and the material available on record.

3. The applicant-accused is seeking anticipatory bail in C.R. No.3085 of 2007 registered with Fauzdar Chawdi Police Station, Solapur for the offence punishable under Sections 3 and 7 of the Essential Commodities Act, read with Section 285 of the I.P.C.

4. The learned counsel appearing on behalf of the applicant submits that the order

rejecting the anticipatory bail application dated 11.6.2007 passed by Shri R.B. Patil, Ad-hoc Additional District and Sessions Judge-4, Solapur is erroneous and unsustainable in the eye of law. He submits that other accused placed in the similar circumstances are enlarged on bail as such the applicant would be entitled for bail on the ground of parity.

5. In his submission orders dated 11.6.2007 and 11.7.2007 respectively passed in Criminal Misc. Appln. No. 586 of 2007 and Criminal Misc. Appln. No. 598 of 2007 if perused and the role of the co-accused in commission of the offence is examined, then the applicant, who has played similar role in commission of the alleged offence, cannot be denied anticipatory bail.

6. The learned A.P.P. appearing for the State found it difficult to support impugned order rejecting application for bail except to submit that both the orders sought to be relied upon were passed under Section 439 of the Cr.P.C. Whereas, impugned order under challenge is under Section 438 of the Cr.P.C.

7. The learned counsel for the applicant, while reacting to the above submission, urged that considerations for grant of bail under Sections 438 and 439 of the Cr.P.C. are similar. As such, the applicant could not have been denied anticipatory bail, who was seeking bail on parity.

8. Having heard rival counsel, needless to mention that one of the co-accused Vijaysinh Swamirao Jagtap is released on bail on executing P.R. bond of Rs.15,000/- with one surety in the like amount, observing as under:

> "It appears from the police papers that police have recovered the muddemal from the possession of the applicant. Therefore, presence of the applicant is not necessary for interrogation by the police. Applicant is resident of Solapur. He is in service in S.T. Department. Therefore, there is no possibility of jumping of bail by the applicant. He can be released on bail by putting certain conditions."
>
> (Emphasis supplied)

9. Another co-accused Kumar Devidas Jadhav is also enlarged on bail vide the order dated 11.6.2007 in Criminal Misc.Appln. No. 586 of 2007 observing as under:

> "From the copies of the police papers it appears that police have seized the kerosene from the house of the applicant. Therefore, there is no question of any further recovery from the applicant. Applicant can be released on bail by putting certain conditions. Applicant can be directed to attend the concerned police station to facilitate the investigation. It is not necessary to keep the accused behind bar..."
>
> (Emphasis supplied)

10. Perusal of the above observations made by the learned Ad-hoc Additional District and Sessions Judge-4, Solapur, in the above orders would make it clear that inspite of seizure of kerosene from both the co-accused, they were enlarged on bail.

11. In the above backdrop, if the order dated 11.6.2007 rejecting application of the present applicant for bail is perused, the grounds of rejection are as under:-

> "It appears from the police papers that accusation against

the applicant is prima facie. Police have recovered kerosene from the residential house of the applicant. It cannot be said that applicant is falsely involved in the offence. The release of the applicant on anticipatory bail will cause obstruction to the police during investigation and therefore, applicant is not entitled for anticipatory bail..."

(Emphasis supplied)

12. The seizure of kerosene from the present applicant is not in dispute. Similar was the case of other two co-accused. The present applicant has been denied bail since kerosene was recovered from him; whereas, on the same factual matrix bail is granted in favour of the other co-accused referred to hereinabove.

13. In my view, the learned Ad-hoc Additional Sessions Judge-4, Solapur Shri R.B. Patil has treated similarly placed accused person differently and passed unsustainable order on the same day rejecting application of the applicant for anticipatory bail and granting bail in favour of other two accused persons which learned A.P.P. found it difficult to support.

14. In the result, the applicant is granted anticipatory bail on following terms and conditions:-

a] The applicant Devidas Ramchandra Jadhav, in the event of arrest in C.R.No. 3085 of 2007 be released on bail on his executing P.R. bond of Rs.15,000/- with one surety to make of the said amount.

b] that he should report to Phauzdar Chawdi Police Station, Solapur on every Thursday and Sunday between 11.00 to 2.00 p.m.till filing of the charge sheet.

c] the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

d] the applicant shall not pressurise witnesses and that he shall co-operate with the Investigating agency, if required.

15. This order of anticipatory bail shall remain in force till the filing of the charge sheet. It would be open for the applicant to apply for regular bail before the regular Court.

16. The application is allowed in the above terms.

(V.C.DAGA,J.)